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Matthew M. Childs, P.A.

August 5, 1999

Blanca S. Bayó, Director  
Division of Records and Reporting  
Florida Public Service Commission  
4075 Esplanade Way, Room 110  
Tallahassee, FL 32399

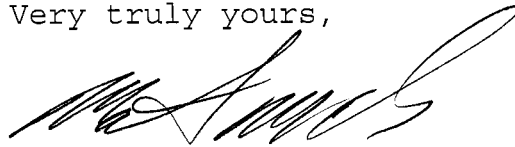
RE: DOCKET NO. 980569-PU

Dear Ms. Bayó:

Enclosed for filing please find the original and fifteen (15) copies of Florida Power & Light Company's Rebuttal Comments in the above referenced docket.

Also enclosed is a formatted double sided high density 3.5 inch diskette containing the Rebuttal Comments of Florida Power & Light Company.

Very truly yours,



Matthew M. Childs, P.A.

MMC:ml

cc: All Parties of Record

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Proposed amendments to Rules ) DOCKET NO. 980569-PU  
25-4.002, F.A.C., Application and Scope; ) DATE: AUGUST 5, 1999  
25-4.141, F.A.C., Minimum Filing )  
Requirements for Rate of Return )  
Regulated Local Exchange Companies; )  
Commission Designee; 25-4.202, F.A.C., )  
Construction and Waivers; 25-24.455, )  
F.A.C., Scope and Waiver; 25-6.002, )  
F.A.C., Application and Scope; 25-6.043, )  
F.A.C., Investor-Owned Electric Utility )  
Minimum Filing Requirements; Commission )  
Designee; 25-6.0438, F.A.C., Non-Firm )  
Electric Service - Terms and Conditions; )  
25-17.087, F.A.C., Interconnection and )  
Standards; 25-30.010, F.A.C., Rules for )  
General Application; 25-30.011, F.A.C., )  
Application and Scope; 25-30.436, F.A.C., )  
General Information and Instructions )  
Required of Class A and B Water and )  
Wastewater Utilities in an Application )  
for Rate Increase; 25-30.450, F.A.C., )  
Burden of Proof and Audit Provisions; )  
25-30.455, F.A.C., Staff Assistance in )  
Rate Cases; 25-30.456, F.A.C., Staff )  
Assistance in Alternative Rate Setting; )  
25-30.570, F.A.C., Imputation of )  
Contributions-in-Aid-of-Construction; )  
and 25-30.580, F.A.C., Guidelines )  
for Designing Service Availability Policy )  
\_\_\_\_\_ )

REBUTTAL COMMENTS

Pursuant to the directions in Order No. PSC-99-0968-PCO-PU, Florida Power & Light Company ("FPL"), hereby submits this its rebuttal comments to those of the Commission Staff.

Since the initiation of this docket more than a year ago, FPL has participated because of its perception that the proposed rule

revisions would have serious adverse impact on FPL's substantial interests. It was asserted that various provisions of the Florida Administrative Procedure Act, (Chapter 120, Florida Statutes), compelled the revision to the Commission rules as proposed in this docket. FPL has sought to obtain the basis for that conclusion since the beginning of this docket.

In its Pre-filed Comments filed in this docket on June 24, 1999, FPL pointed out the lack of rationale for the action proposed in this docket and that it was not clear whether Staff reliance is on Section 120.542 and 120.536, Florida Statutes; that the "explanations" for the revisions to date are bare assertions; and that the lack of explanations put FPL in the untenable position of attempting to guess at the Staff's rationale and then "prove a negative".

In the Staff responsive comments filed on July 15, 1999, no attempt was made to provide the rationale for the rule revisions in this docket. Instead, the Staff restates the previous bare assertions and then takes FPL to task for failing to prove the negative.

1. Staff's first basis of criticism is to refer to and quote several provisions of Section 120.542 as well as an excerpt from a Law Review article and state that "FPL has not addressed [these] authorities." This is wrong. In this regard, FPL incorporates all of its prior comments and filings in this docket. Moreover, the

"above authorities" as identified by the Staff are not authorities and do not support the action recommended. For instance, referring to subsection 120.542(1), the Staff asserts that no mention is made (in Section 120.542) of variance and waiver provisions of rules. Clearly, the Staff wishes to draw an inference and to do so without saying so (apparently that the failure to mention rules means that they have been repealed) but has failed to state the basis for that inference. Having failed to establish any support for its own position the Staff then takes FPL to task for failing to deal adequately with the bare assertions Staff presented.

Next, reference is made to an excerpt from a Law Review article. Contrary to the Staff's assertion FPL has addressed that Law Review article (And, it provided it to Staff). Moreover, Staff's reliance on the sentence from the Law Review article simply "begs the question". The point however is that the question to be decided whether the variance and waiver provisions of the Commission's rules have been eliminated not whether, assuming that to be the case, the Commission can ignore the statutory standards in applying the statute.

2. Staff also, and obliquely injects a new argument by asserting:

"...nor has [it] explained why the Commission would have authority to maintain is rule waiver provisions even though it has not been granted an exception to the Uniform Rule[s] of Procedure on waivers and variances."

Staff then attempts to establish an inconsistency by FPL by incorrectly referring to the position advocated by FPL in Docket No. 981890-EU.

FPL does not understand the adversarial approach. However, FPL must provide some response here. First in Docket No. 981890-EU, FPL pointed out that Section 120.54(5)(a) 1. expressly provides:

...the uniform rules shall be the rules of procedure for each agency subject to this chapter unless the Administration Commission grants an exception to the agency under this subsection.

In addition, Rule 28-108.001, Petition for Exception to Uniform Rules of Procedure (a part of the Uniform Rules) directs each agency head to petition for an exception "...for all of the agency's procedural rules which fall within the subject matter or scope of any of the individual Uniform Rules of Procedure...". The Commission did not seek this exception for the rules at issue here. Certainly, it cannot be suggested that the Commission consciously failed to comply. Of course not. The Commission did not identify the rules at issue here as being within the "subject matter or scope" of the Uniform Rules. Instead, the rules at issue here were expressly identified by the Commission as exceeding its rulemaking authority under Section 120.536(2), Florida Statutes, and as noticed by the Commission this Docket is to implement the requirements Section 120.536.

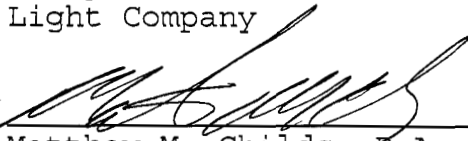
It is thus not clear whether the Staff is seeking to go beyond the notice in this Docket and characterize the Commission's actions differently than the Commission has.

3. Staff also asserts that FPL has yet to provide a meaningful response to the substance of the stated rationale (set forth in its December 3, 1998 recommendation). Once again, FPL respectfully suggests that this "rationale" is not enlightening.

As set out in Section 120.536(2), the Commission was required to initiate rulemaking by January 1, 1999 to repeal rules "exceeding the rulemaking authority permitted by this Section for which authorizing legislation does not exist." FPL has simply been attempting to obtain the rationale for the assertion that the rule at issue fit in this category. FPL does not believe that repeated assertions alone satisfy that request.

Respectfully submitted,

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215 South Monroe Street  
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Attorneys for Florida Power  
& Light Company

By:   
Matthew M. Childs, P.A.

**CERTIFICATE OF SERVICE**  
**DOCKET NO. 980569-PU**

I **HEREBY CERTIFY** that a true and correct copy of Florida Power & Light Company's Rebuttal Comments has been furnished by Hand Delivery (\*), or U.S. Mail this 5<sup>th</sup> day of August, 1999, to the following:

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By: 

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